

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff—Appellant,

vs.

Supreme Court No. 152448
Court of Appeals No. 317892
Circuit Court No. 10-2936-FC

TIA MARIE-MITCHELL SKINNER,

Defendant—Appellee.

PLAINTIFF-APPELLANT'S REPLY BRIEF

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- I. **MCL 769.25 does not require the trial court to make findings concerning any factor before it is able to sentence a juvenile convicted of first-degree murder to life without parole; and any juvenile has notice when committing first-degree murder that the statutorily authorized range of sentences includes life without parole.**

The sentencing court in this case did not determine any facts not already determined by the jury's verdict. Unlike the sentences that were challenged in the cases discussed in the People's Supplemental Brief (*Apprendi*, *Ring*, *Blakely*, *Cunningham*, and *Alleyne*) there is nothing in MCL 769.25 that premises a sentencing court's authority to impose a term of life without parole on any specific finding. The statutory maximum for first degree murder is life without parole. MCL 769.25 provides that the prosecuting attorney may file a motion to sentence a defendant up to the maximum penalty—life without parole—that is allowed upon a jury's verdict of guilt.

The decision in *Miller v Alabama*, 567 US 460; 132 S Ct 2455; 183 L Ed 2d 407 (2012), mandated an individualized consideration of the offender's youth to ensure a proportional sentence where mitigating considerations were taken into account. The sentencing process required by *Miller* did not require considerations before aggravating the available sentence to one of life without parole. As the Court of Appeals correctly observed in *People v Hyatt*, 316 Mich App 368; 891 NW2d 549 (2016), "a sentencing authority remains free under *Miller* to impose a life-without-parole sentence based solely on the jury's verdict." *Hyatt*, at 400.

The Defendant suggests that a juvenile who murders would conclude that without additional pleadings and fact finding after their conviction, they would receive a term of years sentence.¹ Only upon these post-conviction events, the Defendant claims, would juveniles who murder have notice that they may be facing life without parole. This misreads the statute entirely. The prosecutor's ability to file the motion seeking imposition of a life without parole sentence is set forth in MCL 769.25(2). MCL 769.25(4) is equally clear that if a motion is not filed, the term of years sentence results. MCL 769.25(6) provides, however, that were a motion is filed, a *Miller* hearing shall be conducted, and pursuant to MCL 769.25(9), "[i]f the court decides not to sentence the individual to imprisonment for life without parole eligibility, the court shall sentence the individual to a term of imprisonment for which the maximum term shall be not less than 60 years and the minimum term shall be not less than 25 years or more than 40 years."

Reading the statute in its entirety provides any juvenile who murders with an unmistakable statement of the range of potential sentences, and the procedure by which they could be imposed. As the Court of Appeals observed in *Hyatt*:

Put simply, *Miller* required individualized sentencing as a means of mitigating the maximum penalty authorized by the jury's verdict, rather than aggravating the penalty beyond that which was set forth by law. So too, MCL 769.25 sets a maximum punishment—in the event the prosecution files the requisite motion—at life without parole and mandates that the sentencing judge consider the *Miller* factors in a way that mitigates, rather than enhances, the maximum penalty. *Hyatt*, at 410-411.

¹ Defendant's Brief, p. 33

This Court should conclude, as the Court of Appeals did in *Hyatt*, that there is nothing additional that the sentencing court must find before it can sentence a juvenile to life without parole. Neither *Miller*, nor MCL 769.25, requires anything beyond an individualized consideration of mitigating factors. Defendants are on notice as to the range of potential punishments that may be imposed.

II. The number of potential juvenile life without parole sentencing hearings that may occur is not central to this Court’s determination of whether a right exists to a jury determination of sentence.

The Defendant has misconstrued the People’s argument that practical complications exist in submitting the issue of whether to impose life without parole to a jury, and the existence of these complications supports the conclusion that neither *Miller*, nor the Michigan Legislature, intended that a jury make the decision. The Defendant’s brief states that “the government has suggested that it is inefficient or somehow unduly burdensome to effectuate defendant’s Sixth Amendment jury trial rights in this case.”² This is not the suggestion advanced by the People at all. The issue is not the burden in terms of work that would have to be done by the prosecution—although such hearings will required expenditure of time and resources—but rather the inherent difficulty in framing the issue posed by a *Miller* sentencing hearing in such a way that a jury could make findings.

In the supplemental brief filed in this matter, the People pointed to the difficulty presented by the majority in *People v Skinner*, 312 Mich App 15; 877 NW2d 482 (2015), when it required that the jury “make findings on the *Miller* factors as codified at MCL 769.25(6) to determine whether the juvenile’s crime reflects ‘irreparable corruption’ beyond a reasonable doubt.” In requiring this finding, the *Skinner* decision offered no guidance as to how a jury would actually make these findings or report them to the sentencing court. *Skinner*, at 58-59. The majority refers to the need for a jury finding of “irreparable corruption,” but even

² Defendant’s Brief, p. 36

the majority acknowledged that *Miller* did not establish a bright-line test to determine whether a juvenile's crime reflects irreparable corruption, and that a range of factors must be considered. *Skinner*, at 27, 49.

It is unclear whether, under the *Skinner* majority's decision, a jury would simply render a singular decision as to whether a juvenile is "irreparably corrupt," or whether the juvenile should be sentenced to life without parole; or a series of decisions where the jury would have to make a finding as to each of the considerations set forth in *Miller*. It is further unclear how under the latter approach, each factor would translate into a decision of whether life without parole should be imposed. While the Defendant seeks to minimize these practical considerations as "the government" not wanting to take on "an onerous task,"³ they are considerations beyond mere workload and docket efficiency and should not be overlooked. The Defendant's contention that the number of potential juvenile life without parole cases in comparison to the number of capital cases in Michigan is small is largely irrelevant in light of the fact that *Miller* factors were never meant to act as functional equivalents to elements of a greater offense requiring submission to a jury.

³ Defendant's Brief, p. 36

III. Comparison of the juvenile life without parole sentencing process to habitual offender provisions or the sexually delinquent person statute does not support a conclusion that a juvenile defendant facing life is entitled to a jury determination.

The Defendant argues that jury involvement in sentencing is not unprecedented or unworkable. In support of this assertion, the Defendant points to two instances in Michigan where a jury makes (or historically has made) findings related to sentencing: the former habitual offender provision, and the sexually delinquent person statute. Neither of these examples provides a reason why this Court should conclude that a jury should determine a juvenile's sentence for first degree murder.

As the Defendant concedes, the jury determination of habitual offender status did not involve particularly complex or intricate evidence. Additionally, this determination did not involve any level of discretion, balancing, or consideration of circumstances. Rather, the jury had to find one specific, readily provable fact: whether the defendant in question had prior criminal convictions. This inquiry is a clear yes or no, determined by the existence of a prior conviction of record. The trial on a habitual offender prosecution required that the People prove both the fact of the alleged prior conviction and the identity of the Defendant as the person who had committed those previous offenses. *People v Hastings*, 94 Mich App 488, 491-92; 290 NW2d 41 (1979). Unlike a *Miller* proceeding, where there may be expert witnesses, reports, mental evaluations, and witnesses; a habitual offender proceeding merely requires proof that one was convicted of a crime. More importantly, the habitual offender statute specifically provided that the prosecution

must prove elements, whereas the *Miller* factors as codified in MCL 769.25 merely provide the court with a framework for consideration of an appropriate sentence.

The other example of jury involvement in the sentencing context that the Defendant presents to this Court is MCL 767.61a, which provides for a charging enhancement for an offense committed by a “sexually delinquent person.” This legislation was enacted to provide an alternate sentence for certain sexual offenses where the evidence appeared to justify a more flexible form of incarceration. *People v Winford*, 404 Mich 400, 405-406; 273 NW2d 54 (1978). Such an enhancement causes the penalty to be an indeterminate term, the minimum being one day and the maximum being life imprisonment. Sexual delinquency must be charged prior to trial, and cannot be added after trial begins. *Winford*, at 408. Sexual delinquency is not considered an element of the underlying offense. Rather, a finding of sexual delinquency “allows for an enhancement of the sentence.” *People v Franklin*, 298 Mich App 539; 828 NW2d 161 (2012).

This is not similar to the sentencing process in MCL 769.25, which provides for a hearing on mitigating factors after conviction for the offense of first degree murder. Upon a conviction as a sexually delinquent person, the sentencing court may sentence to something potentially higher than the original offense charged. MCL 769.25, in contrast, is mitigating in nature. MCL 767.61a requires a separate factual determination that must be charged along with an underlying offense. MCL 769.25 provides a process for sentencing once one has already been convicted of the crime.

In addition, the facts that a jury must find to render a verdict in a trial for a sexually delinquent person are clearly set forth in MCL 750.10a, and relate to whether or not the defendant has engaged in prior sexual acts. The term “sexually delinquent person” means one of three things: 1) “any person whose sexual behavior is characterized by repetitive or compulsive acts which indicated a disregard or consequences or the recognized rights of others;” 2) an individual who has engaged in acts “by the use of force upon another person in attempting sex relations of either a heterosexual or homosexual nature;” or 3) an individual who has engaged in “the commission of sexual aggressions against children under the age of 16.”

The *Miller* factors are not a simple factual finding, but an array of considerations meant to encompass a juvenile’s upbringing, mental health, and psychological development; along with their rehabilitative potential and the circumstances of the crime. This evaluation is multifaceted and requires a probing inquiry by the court into both the past and the future of an individual. This cannot be compared to findings of whether or not an individual has done a particular act (i.e. sexual misconduct, or a prior felony) in the examples that the Defendant has posed for this Court.

RELIEF REQUESTED

WHEREFORE, for the reasons stated above, as well as in the initial brief filed in this matter, the People request that this Court reverse the majority's decision in *Skinner* that a jury must be empaneled to determine whether a juvenile may be sentenced to life without parole under MCL 769.25. Further, the People request that this Court conclude that MCL 769.25, as applied by sentencing courts, does not violate the Defendant's Sixth Amendment rights. Finally, the People request that this Court affirm the Defendant's sentence of life without parole because the sentencing judge fully complied with MCL 769.25, as well as *Miller*, in imposing a sentence that is reasonable, individualized, and proportional to the Defendant and to her crimes.

Respectfully Submitted,

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